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OFFICE OF PETITIONS

In re Application of
James D. McCarten
Application No. 09/557,693
Filed: April 25, 2000
Attorney Docket No. N/A

ON PETITION

This is a decision on the petition under 37 CFR 1.137(b), filed February 25, 2003, to revive the above-identified application.

The above-identified application became abandoned for failure to reply within the meaning of 37 CFR 1.113 in a timely manner to the final Office action mailed April 23, 2002, which set a shortened statutory period for reply of three (3) months. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the above-identified application became abandoned after midnight July 23, 2002.

37 CFR 1.137(b)(3) requires a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional. Since the statement contained in the instant petition varies from the language required by 37 CFR 1.137(b)(3), the statement is being construed as the statement required by 37 CFR 1.137(b)(3) and petitioner must notify the Office if this is **not** a correct interpretation of the statement.

The petition is **GRANTED**.

An extension of time under 37 CFR 1.136 must be filed prior to the expiration of the maximum extendable period for reply. See In re Application of S., 8 USPQ2d 1630, 1631 (Comm'r Pats. 1988). Accordingly, since the \$465 extension of time submitted with the petition on February 25, 2003 was subsequent to the maximum extendable period for reply, this fee is unnecessary and will be refunded to petitioner by Treasury Check, in due course.

The application is being forwarded to Technology Center 3600, for processing the Request for Continued Examination under 37 CFR 1.114 filed on July 30, 2002, which was accompanied by a certificate of mailing dated June 23, 2002.

Telephone inquiries concerning this decision should be directed to Andrea Smith at (703) 308-6711.

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for Patent Examination Policy